IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

CRP.No. 1197 of 2005()

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AGAINST THE ORDER DATED 13/10/2005 IN EP 678 OF 2003 IN OS.649/1996 of II ADDL.SUB COURT,THRISSUR

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REVN. PETITIONER: 1ST JUDGMENT DEBTOR:

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C.A. JOHNY, S/O. CHALLISSERY ANTONY,
AVINISSERY VILLAGE-DESOM, THRISSUR TALUK.

BY ADV. SRI.DILIP J. AKKARA

RESPONDENTS: DECREE HOLDER:

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CHARTERERD CAPITAL KURIES (P) LTD.,
THRISSUR.

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.K.JAYAKUMAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRP.No. 1197 of 2005

IA NO. 3407 OF 2005 IN C.R.P. No. 1197 OF 2004

DISMISSED

25.05.2007 SD/- PIUS C. KUIAKOSE, JUDGE.

**PIUS C. KURIAKOSE, J.**

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C.R.P No. 1197 OF 2005

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Dated this the 25th day of May, 2007

**JUDGMENT**

The order of the execution court directing arrest and detention of all the four judgment debtors is under challenge in this Civil Revision Petition by the first judgment debtor.

2. Heard Sri.Dilip J. Akkara, learned counsel for the petitioner and Sri. S.V. Balakrishna Iyer, learned counsel for the respondent.

3. Mr.Akkara would submit that the finding of the execution court that the petitioner is having sufficient means to pay off the decree debt and has been willfuly negligent in the matter of payment is not based on any legal evidence. According to the learned counsel, the petitioner was a driver in the KSRTC and on account of serious health problems had not been attending to duties. Steps were taken for production of the salary certificate of the petitioner so as to rebut the evidence adduced on behalf of the decree holder that the petitioner is having a salary of Rs.3,000/-. Even before the salary certificate could be produced, the court below closed the proceedings and went on to pass the impugned order.

4. In this Court along with the CRP the salary certificate is produced as Annexure I which will show that the take home salary of the

petitioner during the month of November 2004 was only Rs.1,532/- while during the month of December 2004 the same was Rs.1,851/-. The certificate will further show that disciplinary action has been recommended against the petitioner on the reason that he has absented from duty since 01.01.05. Pursuant to disciplinary proceedings the petitioner has been sacked from service and as matters obtain now he is without any income. Counsel further submitted that the version of the decree holder that the petitioner was having immovable properties is not supported by any legal evidence at all. Actually the petitioner has no property at all.

5. The learned counsel for the respondent would submit that the unattachable portion of the salary in terms of Section 60 of the CPC at least can be treated as his income. The relevant point of time to determine the means of a judgment debtor for the purpose of Section 51 of the CPC is the date of the decree. Going by that date, at the time when the impugned order was passed, substantial amounts had come into the hands of the petitioner. The impugned order according to the learned counsel is therefore justified.

6. Even though the submission of the respondent's counsel has some attraction, I am inclined to remit the matter back to the execution court in the light of the fact that steps were taken by the petitioner for production of salary certificate and even before the salary certificate was

produced, evidence was closed and the impugned order was passed on the reason that the salary certificate has not been produced by the petitioner. Accordingly, I set aside the impugned order, but on condition that the petitioner shall pay a further amount of Rs.10,000/- within six weeks from today and will continue to pay till such time as the enquiry is completed and fresh orders are passed by the execution court at the rate of Rs.1,000/- on the first of every succeeding month. It is made clear that in the event of any default, he will forfeit the benefit of this remand order and the impugned order will thereupon revive.

The Civil Revision Petition is disposed of as above. No costs.

**PIUS C. KURIAKOSE, JUDGE**

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